APPENDIX A

Opinion of United States Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No 50—September Term, 1966.

(Argued September 28, 1966 Decided October 4, 1966.)

Docket No. 30504

UNITED STATES OF AMERICA,

Appellee,

—against—

SAM ROSENZWEIG,

Appellant.

Before:

MOORE, FRIENDLY and KAUFMAN,

Circuit Judges.

Appeal from a judgment of conviction on two counts for violations of 26 U.S.C. §7203 (failing to register with the District Director of Internal Revenue for being connected with the business of accepting wagers as required by 26 U. S. C. §4412(a)) and 26 U. S. C. §7262 (failing to pay the special tax imposed by 26 U. S. C. §4411 on those receiving wagers). Judgment was entered after a non-jury trial before Leo F. Rayfiel, *Judge,* United States District Court for the Eastern District of New York,

Affirmed.

FRANCIS L. GIORDANO, Brooklyn, New York (Charles T. Drago, Brooklyn, New York, on the brief), *for appellant.*

RAYMOND BERNHARD GRUNEWALD, Assistant United States Attorney for the Eastern District of New York (Joseph P. Hoey, United States Attorney for the Eastern District of New York, Brooklyn, New York, on the brief), *for appellee.*

PER CURIAM:

The Government, after showing that appellant, Sam Rosenzweig, had failed to pay the tax prescribed by Section 4411 of the Internal Revenue Code, 26 U. S. C. §4411, and had failed to register his name and place of residence as prescribed by Section 4412(a) of the Code, 26 U. S. C. 4412(a), presented five witnesses who all testified that they had had conversations with appellant concerning wagers on horses; that appellant had furnished them with telephone numbers and code names to enable them to place bets; and that after the races on which they had bet, they met with appellant at specified times and either paid him the money they had lost or collected from him their winnings. The witnesses testified further that they knew of no one else who was connected with their wagers, and that when they placed their bets by telephone, they identified themselves with their initials and appellant's name, e.g., "E. B. for Sam [appellant]." Cross examination established that appellant did not personally receive any of these telephone calls. There was further testimony to the effect that appellant

was familiar with the requirements of the Internal Revenue Code.

Appellant took the stand and admitted settling accounts with the above five witnesses, but denied that he was acting on his own behalf. He testified that he was performing the said functions for one Slackman and that he was not reimbursed for his troubles. He denied having "accepted" any wagers and further denied having any proprietary interest in the bookmaking business of Slackman. Judge Rayfiel termed appellant's testimony as unworthy of belief.

Appellant argues that, under the terminology adopted by the Supreme Court in *United States* v. *Calamaro*, 354 U. S. 351 (1957), he was a mere "pick-up man" and was consequently not subject to the special tax and did not come within the special registration provisions of the Code. This Court has recently held that direct evidence of a proprietary interest in a gambling scheme is not necessary to hold a defendant subject to the instant Code sections. *United States* v. *Marquez*, 332 F. 2d 162 (2d Cir.), *cert. denied*, 379 U. S. 890 (1964). We believe that the evidence introduced by the Government was clearly sufficient to establish that appellant was more than a mere "pick-up man" and was thus guilty of non-compliance with Sections 4411 and 4412(a) of the Code.

Affirmed.

APPENDIX B

Judgment of United States Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the fourth day of October one thousand nine hundred and sixty-six.

Present:

HON. LEONARD P. MOORE,
HON. HENRY J. FRIENDLY,
HON. IRVING R. KAUFMAN,

Circuit Judges.

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

SAM ROSENZWEIG,

Defendant-Appellant.

Appeal from the United States District Court for the Eastern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Eastern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

/s/ A. DANIEL FUSARO
Clerk